A Pólay Elemér Alapítvány Könyvtára
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Állam- és Jogtudományi Kara
Civilisztikai Tudományok Intézetében

Intézetvezető:
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LEGE DUCE, COMITE FAMILIA

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TARTALOM

ELŐSZÓ

A Szegedi Tudományegyetem Állam- és Jogtudományi Karának egyik legtiszteletreméltóbb tradíciója, hogy nem feledkezik meg a kollegák egyes fontosabb életpálya állomásáról, mindemellett a Civilisztikai Tudományok Intézetének közösségi életérzést megjelenítő és közvetítő „szokása", hogy a kollegák legfontosabb napjait, szakmai állomásait megünnepli, legyen az születésnap, karácsony, doktori értekezés védése, habilitáció, vagy éppen jogászi pályán eltöltött csodálatos 60 év megünneplése.

Ezt a hatvan évet nagyon nehéz leírni az ünnepelt relációjában, hiszen ha vannak örökifjak, akkor vannak örökifjhölgyek is, s ha elfogadjuk ezen személyi kör létét, akkor bizton állíthatjuk, hogy dr. Tóthné Dr. Fábián Eszter címzetes egyetemi tanár közibük tartozik. Professzor Asszony karunk azon emblematikus oktatóinak egyike, aki hosszú éveken keresztül biztosította a kar tudományos és szakmai színvonalát, tevékenyen hozzájárult a kar tudományos utánpótlás neveléséhez, a tudomány iránt fogékony tehetséges hallgatók felismeréséhez és gondozásához. Az ünnepelt példát mutat mindannyiunk számára, nem csak a tudomány iránti elkötelezettségből, szakmai alázatból, hanem emberségből, kollegialitásból, jószándékból egyaránt.

Az ünnepelt tudományos kutatóként, a hallgatók és a fiatal kollegák számára meghatározó mintát nyújtó oktatóként mindig a család primátusát hangsúlyozza, a család védelmét helyezi előtérbe. Ezt a szemléletmódot kívánja tükrözni címválasztásunk is: „Lege duce, comite familia" (A törvénnyel mint vezetővel, családdal mint kísérővel.).

Jelen kötet a tisztelgés kötete, kollegák, pályatársak fejezik ki Professzor Asszony iránti tiszteletüket kötetté szerkesztett tanulmányaikban.

Az előszó kötelezi jelen sorok jegyzőjét egy rövidke visszatekintésre, szemelvények felelevenítésre e gazdag és korántsem unalmas szakmai életútból.

Fábián Eszter a békési Szegedi Kis István Gimnázium humán tagozatán, jeles eredménnyel érettségizett. Bár az egyetemi évek Szegedre, a József Attila Tudományegyetem Állam- és Jogtudományi Karára repítették, békési kötődése sohasem szűnt meg. Olyannyira nem, hogy minden hónapban ők, „a békésiek" mintegy harmincan találkoznak, összeülnek, beszélgetnek, egyszerűen – és irigylésre méltóan – jól érzik magukat. Jogi diplomát 1957-ben, summa cum laude minősítéssel szerzett. Az egyetem után közvetlenül az államigazgatásban helyezkedett el, előbb Szeged Megyei Jogú Városi Tanács VB Igazgatási Osztályán előadó, majd 1958. augusztus 1-jétől a Szeged Városi Gazdasági Döntőbizottság vezető döntőbírója. E rövidke „kanyar" után 1963-ban „tért vissza" alma materébe, ugyanezen év szeptember 1-jétől félállású egyetemi adjunktus a JATE Állam- és Jogtudományi Karának Polgári jogi Tanszékén, főállású egyetemi adjunktussá 1964. február 1-jétől nevezték ki, 1979. július 1-jétől egyetemi docens. A Szegedi Tudományegyetem Állam- és Jogtudományi Karának Polgári Jogi és Polgári Eljárásjogi Tanszékén, jelenleg a Civilisztikai Tudományok Intézetében 2005. szeptember 1. óta címzetes egyetemi tanárként dolgozik. Kezdetben polgári jogot oktatott, később azzal párhuzamosan a családi jog társkarok által is elismert oktatójává vált. Mindkét diszciplína mind elméleti mind gyakorlati óráit egyaránt tartotta nappali, levelező és – a korábbi – esti tagozaton is. A doktori képzésben két fakultatív tárgyat gondoz jelenleg is. Nem csak évfolyam- és szakdolgozat témavezetőként, hanem a Polgári Jogi, majd két évtizeden keresztül a Családi jogi Tudományos Diákkör mellett

A perorvoslati szakokra az új eljárásjogi kódex nem tartalmaz speciális rendelkezéseket, így valamennyi perorvoslat az általános szabályok szerint zajlik.

Az előzetes jognyilatkozat felülvizsgálata iránt indított per

Új jogintézményként került be az eljárási törvénybe az előzetes jognyilatkozat felülvizsgálata iránt indított per. Az előzetes jognyilatkozat szabályait a 2014-ben hatályba lépett Polgári Törvénykönyvben találhatjuk, mely az osztrák minta alapján került kodifikálásra hazánkban. A Ptk. 2:41.§ kimondja, ha a körülmények az előzetes jognyilatkozatot tevő személy cselekvőképességének korlátozását követően úgy változtak meg, hogy az előzetes jognyilatkozatban foglaltak teljesítése a gondnokolt érdekével ellentétes lenne, a bíróságtól a rendelkezés alkalmazásának mellőzését a gondnokolt, a gondnok, a gyámhatóság és az ügyész kérheti. Ennek részletszabályai azonban eddig nem kerültek kidolgozásra, így az új eljárásjogi kódexben került kodifikálásra.

A jogalkotó szerint a peres eljárást az indokolja, hogy az érintett akaratát (önrendelkezését) tükröző előzetes jognyilatkozat hatályossá válását a bíróság gondnokság alá helyező ítélete rendeli alkalmazni, ezért annak „mellőzéséről", a gondnokolt akaratának figyelmen kívül hagyásáról nem lehet nemperes eljárás keretében határozni.[19]A gondnokolt érdekével ellentétesen bekövetkező változások pedig bizonyítást érdemlő kategória, emiatt sem lett volna célszerű nemperes eljárás keretében a kérdésről dönteni, ahol korlátozott a bizonyítás lefolytatásának lehetősége.

A jogalkotó az új pertípussal egyfajta utóperét teremtette meg a gondnoksági pereknek azzal, hogy jelen eljárásra is a gondnoksági perek szabályait kell megfelelően alkalmazni. A bíróságnak ítéletében kell rendelkezni az előzetes jognyilatkozatban foglaltakról, vagyis ha a körülmények a gondnokolt érdekével ellentétesen változtak meg, akkor az előzetes jognyilatkozat egy részének vagy egészének jövőbeli mellőzéséről dönt.

Összegzés

A gondnoksági perek szabályváltozásaival is megvalósult az a jogalkotói cél, amely az egész perjogi kodifikáció során érvényesült, vagyis az eljárási szabályok az anyagi jogi szabályokkal történő szinkronba hozatala. Az új Pp. reflektál a megváltozott terminológiára, beépíti a gyakorlati tapasztalatokat, amelyeknek köszönhetően nemcsak az eljárás hatékonysága valósítható meg, hanem az alperesek kímélete is. Az előzetes jognyilatkozatok felülvizsgálata iránti per bevezetésével pedig a jogalkotó megteremti annak lehetőségét, hogy a jognyilatkozatot tevő személy érdekeinek védelme a nyilatkozat hatályosulását követően is megfelelően biztosítva legyen.

[19] http://www.parlament.hu/irom40/11900/11900.pdf (2017. július 15.)

THE BASIC PRINCIPLES OF CODE OF CIVIL PROCEDURE IN CARTEL LAW IN THE 20TH CENTURY

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According to the 20th Act of 1931, any legal action that the Cartel Court oversees, the principles of Code of Civil Procedure (Act I of 1911) had to be applied, for it was the first one that regulated the legal situation of cartels in Hungary.[1] These basic principles in procedural law were as follows: the principal of disposition of the participants, the principle of discussion, the principle of verbalism, the principle of publicity and the principle of free verification. In this study, I intend to describe the principles of the Code of Civil Procedure, which, of course, were relevant during the legal actions of the Cartel Court, as well.

There was no general part in Act I of 1911 (Pp.), which contained the basic principles in a unified manner, but they were enclosed in separate chapters in connection to legal actions. In my study I would like to describe the main characteristics of the contemporary basic principles of the Code of Civil Procedure, which determine the Code of Civil Procedures to this day.[2]

Principle of Disposition:

In connection to verification, during any legal action of the Cartel Court, the principle of free verification was limited and the principle of officiality predominated that in order to provide an opinion or an expert's report, they could turn to the Cartel Board ex officio. In any other case, the rules of the Code of Civil Procedure were in effect during the process of verification.[3]

In civil lawsuits, the participants could vindicate their needs in the field of private law. This referred to as their administrative rights in civil lawsuits.[4] The participants could decide on the legal relationship between them freely during the lawsuit, but outside of the legal action, they remained "masters of the object of the lawsuit".[5] In connection to this

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[1] This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled *Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy*. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary. Ranschburg Nándor: *Karteljog, kartelszervezet*. Iparjogvédelmi Egyesület, Budapest, 1931. 107., Harasztosi Király Ferenc: *A kartel*. Grill Károly Könyvkiadóvállalata, Budapest, 1936. 534., Jancsó György: *A magyar Polgári perrendtartás rendszeres kézikönyve*. Athenaeum Irodalmi és nyomdai Részvénytársaság, Budapest, 1912. 349-368., Falcsik Dezső: *A polgári perjog tankönyve*. Politzer-féle Könyvkiadó-vallalat, Budapest, 1908. 14-30.

[2] Szlezák Lajos: *A perrendi reform és a tárgyalási alapelvek*. Grill Károly Könyvkiadóvállalata, Budapest, 1937. 2.

[3] Harasztosi, 1936. 536.

[4] Jancsó, 1912. 350. See: Pp. articles 394., 186-187., 423., 475.; 312., 512.

[5] Falcsik, 1908. 16.

principle, one of the most significant disposition of the code of Civil Procedures is that in its verdict, the court cannot decide outside of their action complaint, the damning cannot cross over the complaint (*ne eat judex ultra petita partium*).[6] This principle also meant that the judge could not proceed ex officio (*ne procedat judex ex officio*).[7] This was the embodiment of the essence of the so-called principle of disposition, which meant that the participants could dispose freely on their private rights relations. This ruled out an ex officio lawsuit, which referred to initiating a lawsuit ex officio. In order to initiate a legal action, an application by the plaintiff was necessary, but in order for it to have a foundation and start a legal action, it needed the cooperation of the respondent, the so-called appearance. The will of the participants determined the continuation of the legal action, as well. The contents of the lawsuit were defined by the applications introduced by the complainants, and their announcements on each other's applications. The judge could only act according to the applications of the participants, and could not provide a verdict in any other case but what the complainants introduced to him. Dezső Falcsik determined that "without the will and application of the participants, there is no need to force legal benefits or no judicial patronization".[8]

This meant that during the legal action, the participants could reach an agreement, thereby ending the lawsuit. The participants determined the conditions of the agreement. They referred to this as the court settlement, which enabled them to settle the debated topic. In these cases, the court only acted as a legally verification organisation.[9] During cases where matters of civil law had to be settled, the participants had to have a guarantee that they can have a say in their own civil rights.[10]

An agreement could have been reached by the participants if they submitted the task of determining their legal relationship to one or more delegates, which also acted as a replacement for judicial decisions. In these cases, even the judge could start the formation of an agreement between the parties.

The limitation of the principle of disposition is that the participants' freedom to act could have been limited in matters of public or state interests (i. e.: in custody cases).[11]

Principle of Discussion:

The principle of discussion was closely related to the principle of disposition, for a judge could only reach a verdict in civil rights' cases where the participant actually asked for a stipulation. This bore a strong connection to the fact that the participants had to introduce the facts that support their assertions and demands. This means that the principle of discussion means, more or less, that "the participants determine which facts should be taken into account by the judge during a lawsuit. The participants provide factual evidence, and the judge cannot expand the value of legal materials, he can only judge it".[12] The judge did not have an option to take anything into account apart from what was presented to him by the participants. The judge could not question the authenticity of the facts mutually

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[6] Magyary Géza: *Magyar Polgári Perjog*. Franklin-társulat, Budapest, s.d. 218., Falcsik, 1912. 351.

[7] Falcsik, 1912. 351. See Pp. articles 5., 10., 75., 110., 267., 271., 288., 326., 340., 368., 225-226., 268.

[8] Falcsik, 1908. 17.

[9] Ibid. 17., Magyary Géza: *A perbeli egyezségek*. In: Magyary Géza r. tag összegyűjtött dolgozatai. A Magyar Tudományos Akadémia Kiadása, Budapest, 1942. 145-159.

[10] Bacsó Jenő: *Tudományos perjog*. Stúdium Könyvkiadó r.-T., Budapest, 1937. 5.

[11] Falcsik, 1908. 17.

[12] Ibid. 18. Jancsó, 1912. 351.

acknowledged by the participants. If one of the complainants did not acknowledge it, then that participant had to validate his claim.

The judge could only take those pieces of evidence into consideration which were subjected by the participants, which meant that the judge could not provide evidence ex officio. In this sense, the principle of discussion meant that the participants ruled over their legal claims and evidences.

In this sense, the principle of discussion referred to the question of material truths, which depended on the will of the participants. The judge's verdict had to be based on the facts that the participants introduced. Naturally, the participants are invested in finding out the actual truth, and because of this, formal and material truths could both be verified during a lawsuit. In legal actions where public interests were in the focus and in this sense, the principle of discussion had to be limited, then, in order to determine the truth, the judge could take certain facts and evidences into account ex officio, i. e.: marriage lawsuits.[13]

The opposite of the principle of discussion is the principle of investigation, which could only be used in a civil lawsuit in extremely specific cases. This principle meant that the judge did not only reach his verdict based on the evidence provided by the participants, but could also examine facts and collect evidences ex officio. The principle of investigation meant that the rigid structure of the principle of discussion had to be broken in order to determine the material truth. During a civil lawsuit, in contrast with a criminal lawsuit, the principle of discussion had to prevail, according to the main rules.[14] "The principle of discussion [...] does not express the wilful rule of one participant in a lawsuit, but the act that one must select the necessary facts and pieces of evidence according to one's best knowledge in order to reach a fair verdict."[15]

Principle of Verbalism:

The principle of verbalism meant that the judicial verdict had to be based on verbally introduced facts. The documents of litigation, the applications and evidences had to be announced verbally. Certain legal actions were called oral lawsuits, and in these cases, the contentious actions of the participants had to be verbally realised in front of a court.[16] Basically, this was taken into effect by the Code of Civil Procedures if 1911.

A physical copy of the documents of litigation had to be turned in. That meant that the judge based his verdict on the applications and evidences introduced in written form. While the judge reached a verdict, he could only take those into account which were listed on the memorial. In written lawsuits, the judge did not listen to verbal statements from neither the participants nor any witnesses, only documents containing these statements were examined in order to determine the bearings of the case.[17]

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[13] Falcsik, 1908. 18., Markos Olivér – Vincenti Gusztáv: *A Jogi Hírlap döntvénytára. Polgári eljárási jog II.* Jogi Hírlap, Budapest, 1934. 157.

[14] Falcsik, 1908.19., Magyary, s.d. 222-224., Jancsó, 1912. 351.

[15] Magyary, s.d. 221. Jancsó, 1912. 351-355.

[16] Kovács Marcel: *A polgári perrendtartás magyarázata.* Pesti Könyvnyomda Részvénytársaság, Budapest, 1927. 587., Jancsó, 1912. 358., See Pp. articles 206-254., 203., 512-514., 545., 495., 533.

[17] Falcsik, 1908. 20-21., Kovács, 1927. 587.

In contrast with this, the participants are actually present during an oral lawsuit, and the judge actually listens to them, and has a direct connection to the participants, the witnesses and the experts. This also meant that the principle of verbalism worked in close connection to the principle of directness. The contentious actions took place while the judge was actually present. A very important factor in directness is that the contentious actions and reaching a verdict had to be done in front of the same judge. Opposite to this, if a judge did not hear the participants' presentations, but the decision was based on nothing more that the records of these statements, than this fell under the definition of written lawsuits.

However, it can be stated that verbalism did not exclude the predominance of literacy. During oral lawsuits, literacy only referred to recording the legal action that took place in front of a court, and the contentious actions. But in written cases, the judge based his verdict on facts which were recorded in written forms. It is also possible to validate both verbalism and literacy. But it can also happen that both principles are adopted at the same time, and this is referred to as mixed system. In the mixed system, the two principles are employed together and beneficially. In the Hungarian history of procedural law, up to the point when Act No. 1 of 1911 came into effect, written lawsuits were predominant. Some exceptions were the summary procedures of the courts of appeal, which were Act No. 18, 1893.[18] The Code of Civil Procedures of 1911 modified this by making the principle of verbalism universal in civil lawsuits. The 1911 Code of Civil Procedure gives a bigger role to memorials in the task of arranging an oral lawsuit. The statements during the legal action had to be included in the records, so this sort of procedure could not be wholly considered as oral, for its most important aspect was that the principle of verbalism and literacy were both significantly present, but verbalism predominated. Literacy aided in holding and continuing an oral lawsuit, especially during more complicated legal actions.[19]

During the unified usage of the two principles, literacy makes it possible for the applications and the evidences to be literally repeated. The principle of verbalism could become problematic in reviewing a more substantial amount of documents of litigation. This is why before the 1911 Code of Civil Procedures came into effect, "the more complex legal actions concerning bigger values were deemed to be written lawsuits, and those legal actions where the object of the lawsuit was smaller and the bearings of the case were easier to review were deemed to be verbal".[20] However, this changed after the Act of 1911 came into effect. Literacy was no longer considered to be the most important assurance in such cases. It became the predominating opinion that the best way for the judge to take the facts that affect the verdict into account if the whole lawsuit takes place in front of him, the participants described their statements in spoken word and presented their evidences directly to him. The most important principles that helped finding out the material truth were the ones of verbalism and directness. So, in general, the principle of verbalism predominated in lawsuits, but in certain periods of jurisdiction, the principle of literacy was applied.

The judge accepts the documents from the participants, however, this action was not performed by the judge, per se, but rather a specific individual who was selected for this task and gave the collected documents to the judge as a collection (legal bundle). If the court had a question for any participants, that the procedures during a written and an oral

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[18] Meszlény Arthur: *Bevezető a polgári perrendtartáshoz*. Athenaeum Irodalmi és Nyomdai Részvénytársulat, Budapest, 1911. 4.

[19] Falcsik, 1908. 21-22., Jancsó, 1912. 355-357.

[20] Falcsik, 1908. 23.

lawsuit were significantly different, for these only could have been asked in written form ,after an exchange of documents. And the complainants would also have replied in writing. During a specific period of oral lawsuits, the judge could ask the complainants questions, which could aid the legal action to be more efficient and the bearings of the case could be clarified even further.[21]

Literacy could provide ample opportunities for a lawsuit to be stretched, and this could have been averted by limiting the number of memorials, but this brought the limitation of memorials based on their contents into the picture. This is why it is said that the principle of literacy inevitably brought forward the principle of eventuality. This referred to the process that in order to avoid stretching the lawsuit for extremely long by a limitless exchange of documents, the number of memorials had to be limited. This also meant that the contents of each memorial had to be determined, and, as a rule, stress that the participants must state their claim, describe the bearings of the case, list all the evidence and submit a counter-proposal. "According to this rule, the participant must provide all facts and evidences in advance (submitting), all of them at the same time (stacking), if any of these will possibly be needed (*in eventum*)".[22]

In oral lawsuits, there is no need for the principle of possibilities, for the judge, by using his rights to organize the legal action, could thwart the elongation of the lawsuit. This is why there was no strict rule to determine the order of actions within the lawsuits, until the legal action was adjourned, any facts, statements and evidences could be brought up during an oral lawsuit. The course of the legal action was not bound, which meant that it was free and could be shaped in order to be quick and be beneficial in order to find out the material truth. Opposite to this, the written lawsuits were strict and shapeless, long, and put formal truth forward.[23]

The principle of verbalism is basically valid in both courts of the first and second degree, but the situation differs in re-examined cases, where it was almost minimal.[24]

Principle of Directness:

The principle of directness bears a close connection to the principle of verbalism, which means that any actions of the participants during the lawsuit could only be performed in front of a tribunal court. The court could only base its verdict on facts presented by the participants, directly to them.[25] This bears a close relation to the principle of free assessment.

Principle of Publicity:

One of the most important fundamental principles of the Code of Civil Procedures is publicity, and in connection to this, Paragraph No. 207 stated that any participant could

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[21] Falcsik, 1908. 24-25.

[22] Ibid. 24-25., Kovács, 1927. 589., Jancsó, 1912. 362-364. See Pp. articles 221-222.

[23] Falcsik, 1908. 26.

[24] Meszlény, 1911. 5., Markos Olivér – Vincenti Gusztáv: *A Jogi Hírlap döntvénytára. Polgári eljárási jog II.* Jogi Hírlap, Budapest, 1934. 117-118

[25] Falcsik, 1912. 360. See Pp. Sections: 274., 484., 501., 289., 290., 341., 351., 537.

appeal to the court in order to exclude the general public, if doing so resulted in harming any equitable interest of said party.[26] The exclusion of the general public could be applied either to the whole legal action, or only to a specific part of it. If a legal action would result in the publication of information that would harm the business secrets or any other equitable interests of the members of the cartel, the court could order the exclusion of the general public even in the middle of the trial.[27]

The only reason when the basic principles of the Code of Civil Procedures had to be put to effect if the Cartel Law did not contain any declinatory mandates. The court was obliged to do anything in its power to keep the competitors of the cartel from acquiring any data announced during the legal action that fell into the definition of business secret. [28]

The principle of publicity meant social verification and control over the judicial system. Publicity meant that everyone had the fundamental right to be present at the action of the participants and the courthouse. "Publicity can be considered as one of the basic foundations of contemporary legislation and orderly reforms of procedural, next to verbalism and directness".[29] The practice of public functions had to be performed with the verification of the principle of publicity. Since it was realised in both in administration and legislation, its predominance had to be ensured in the judiciary system, as well, for it advances the thoroughness and reliability of arbitration. This does not only have an effect on the actions of judges, but can also enforce the honesty of the participants and the witnesses, for they are less likely to provide dishonest statements or commit perjury when faced with publicity.

The principle of publicity can be limited in certain cases and circumstances. The size of the courtroom basically determines the extent of publicity. The judicial body could exclude the misbehaving individuals from the courtroom. The court could limit or completely exclude the public in public matters or equitable private matters. Not all aspects of the lawsuit were made public.[30]

The principle of publicity is a very important guarantee of civil lawsuits, the constitutional proof of the individual and public freedom.[31]

Principle of Free Assessment of Evidence:

The Code of Civil Procedures only allowed the predominance of the principle of investigation in a limited manner, and that was valid for the cases of the Cartel Court. According to these rules (CCP, Paragraphs 323 to 326), the Cartel Court had the authority to ask a concerned participant to exhibit any documents in proof that were connected to the legal action. Apart from these, it could not ask for any other data or consult.[32]

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[26] Jancsó, 1912. 366., Kovács, 1927. 579-581.

[27] Ranschburg, 1931. 107., Harasztosi Király, 1936. 535.

[28] Ranschburg, 1931. 107.

[29] Magyary Géza: *A magyar polgári peres eljárás alaptanai. (A perbeli cselekmények tana).* Franklin-Társulat, Budapest, 1898. 123. See Pp. Sections: 206., 393., 218., 514., 545., 206., 207., 646., 710., 723., 729., 731.

[30] Falcsik, 1908. 26., Markos Olivér – Vincenti Gusztáv: *A Jogi Hírlap döntvénytára. Polgári eljárási jog. I.* A Jogi Hírlap kiadása, Budapest, 1931. 65.

[31] Jancsó, 1912. 364-365.

[32] Harasztosi Király, 1936. 536.

Based on the principle of discussion, the participants had to provide evidence. The point of verification was that the evidence was submitted to the judge, and based on these, the judge could ascertain the authenticity of the debated fact. The judge examined and assessed the proof, and drew a conclusion. "Due to their occupation, judges have a fundamental right to assess the evidence freely; for they are the only ones who can determine how convincing the reality behind the facts and the submitted evidence was".[33] Assessment was charged to the participant who had interest in the court to consider the introduced fact to be true.[34]

The free assessment of evidence was an extremely big power for the judge, but he could not practice it without supervision, for he had to provide reasoning for each of his decisions. The "good judge will not misuse this responsibility, the ignorant and unconscientious judge will not reach a right verdict even with free assessment, in contrast to the judge who cannot reach a just verdict without free assessment, in contrast to the fact if judicial convictions should bind a judge, even the most educated and determined judge becomes inhibited in his duties."[35]

If we expect that a judge should reach a verdict according to reality, then he must be provided with the freedom to find out the truth. This system was called the one based on free assessment of evidence, or the system of material verification. The judge shall determine the significance of each piece of evidence, after the process of assessment.

The opposite of free assessment was bound assessment, or the formal verification system. This system legally predetermined the value of each piece of evidence. This meant that in the presence of legal conditions, the judge had to take the verification of evidences as facts into account. In this system a judge considered whether or not the legally bound evidences are present, and based on this, the fact that was under assessment was judged to be true or false. This was inherent in the so-called accusatory lawsuits.

The restriction of free assessment can only be necessary if the safety of the legal system demands it, for the verification of certain documents must be compulsory. Especially those which were created by law in order for them to serve as evidence (i. e.: authentication documents). In itself, free assessment is not enough to provide material truths, but can provide freedom for judicial conviction, it does not exclude the possibility of mistakes or misuse.[36]

The basic principles of the Code of Civil Procedures affect the whole legal procedure of the Cartel Court too. They are common themes that fundamentally determine the structure of the procedures, the separate legal institutions and the purpose and methodology of the procedure, even if their contents changed in the meantime. The basic principles determine the course of the procedure as a whole. A part of the basic principles, since they are principles valid in the whole administration of justice, are regulated on a constitutional level, and thereby expressing their significance in Procedural Law.

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[33] Falcsik, 1908. 28., Falcsik, 1912. 361-362. See Pp. articles 270., 315., 317., 272., 377., Ruhmann Emil: *A Jogi Hírlap döntvénytára. Polgári eljárási jog V.* Jogi Hírlap, Budapest, 1943. 135-140, Markos Olivér – Vincenti Gusztáv: *A Jogi Hírlap döntvénytára. Polgári eljárási jog II.* Jogi Hírlap, Budapest, 1934. 72-73., Markos Olivér – Vincenti Gusztáv: *A Jogi Hírlap döntvénytára. Polgári eljárási jog. I.* Jogi Hírlap, Budapest, 1931. 70-71.

[34] Magyary, s.d,. 398.

[35] Falcsik, 1908. 28.

[36] Falcsik, 1908. 28-29., Meszlény, 1911. 8.